

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
February 2, 2010 Session

**DEBRA A. GOODWIN v. JOHN A. GOODWIN, JR.**

**Appeal from the Circuit Court for Blount County**  
**No. E-21771      Jon Kerry Blackwood, Senior Judge**

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**No. E2009-01085-COA-R3-CV - FILED FEBRUARY 25, 2010**

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In this divorce action following a long-term marriage, John A. Goodwin, Jr. (“Husband”) appeals the value placed by the Trial Court on a company owned and operated by Husband known as Interstate Steel Corporation (“ISC”). More specifically, the Trial Court adopted the value testified to by Wife’s expert witness, that value being \$1,650,000. Husband was awarded that entire asset, with Wife being awarded other assets roughly totaling that same amount. Husband appeals claiming the Trial Court erred when it adopted the value placed on ISC by Wife’s expert and that the Trial Court should have used ISC’s value at the point in time when Wife’s employment with ISC was terminated by Husband almost two years before trial. Husband also claims the overall property distribution was inequitable and further that he should have been awarded certain bedroom furniture. We agree with Husband as to the bedroom furniture and modify the final judgment accordingly. In all other respects, the judgment of the Trial Court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the  
Circuit Court Affirmed as Modified; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Sarah Y. Sheppard and E. Maxey Hackworth, Knoxville, Tennessee, for the Appellant, John A. Goodwin, Jr.

Martha Meares and Paul Dillard, Maryville, Tennessee, for the Appellee, Debra A. Goodwin.

## OPINION

### Background

Husband and Wife were married on August 11, 1984. Over twenty-two years later, in March of 2007, Wife filed a complaint for divorce. Wife currently is 56 years old and Husband is 71. According to the complaint, both parties were employed for many years by ISC, a marital asset. The value of ISC is the primary focus of this appeal. Soon after the complaint for divorce was filed, Husband terminated Wife's employment with ISC.

A six day trial took place in March and April of 2009, following which the Trial Court entered detailed findings of fact and conclusions of law. The Trial Court's findings and conclusions set forth a detailed background of the parties' relationship, the value placed on ISC, as well as the overall marital property distribution the Trial Court deemed to be equitable. Accordingly, we quote extensively from the Trial Court's opinion<sup>1</sup>:

The parties started living together in the 1970's . . . . Both parties had prior marriages that ended in divorce. From this relationship, the sons were born. Although not formally married until 1984, the parties held themselves out as husband and wife. During the early years of the relationship and marriage, the husband operated as a sole proprietor of Goodwin's Detailing. This business engaged in the detailing for the fabrication of steel. The wife had not finished high school and worked at small skill jobs until she finally devoted her time as housewife, mother and bookkeeper for Goodwin Detailing. She eventually obtained her GED and an LPN certificate that was inactive at the time of trial.

In early 1992, the parties began to look for property suitable for establishing a steel fabrication business. The parties ultimately purchased property on Valgro Road and began building their business to be known as Interstate Steel Corporation. The parties were the sole shareholders of this corporation. The husband was the General Manager in charge of overall operations and the wife was in charge of the

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<sup>1</sup>We have omitted the discussion pertaining to grounds for divorce as fault is not an issue with respect to the distribution of marital property. *See* Tenn. Code Ann. § 36-4-121(a)(1)(2005)(a court is to distribute marital property "without regard to marital fault . . .").

bookkeeping. Also, during this time, the husband continued to operate Goodwin Detailing. Goodwin Detailing would provide structural drawings for Interstate Steel. Both parties were paid a salary from Interstate Steel. At times, when cash flow for Interstate Steel would become a problem, the parties would loan money to the business. In the early years, the wife would review the financial status of the business and, if possible, would either repay the loans or utilize business profits for the benefit of the parties.

The business employed the sons of this marriage as well as husband's son, Brad, from a previous marriage. A crisis developed in 2003 with the relationship of Brad to the business. Eventually, husband fired Brad. Shortly thereafter, it was discovered that Brad had an inoperable brain tumor and died within a few months of the discovery of the tumor. This event caused the husband to experience a period of severe depression. This condition caused him to ignore the business of Interstate Steel. As a result, the wife and the party's child, Jeremy, took on active roles in managing the business. . . .

In January 2006, [husband once again] began to take an active role in the business. . . . The husband testified that he discovered large sums of money missing from the business while it was under the control of his wife. He testified that he tried to get records, but was unable to obtain them from his wife. He also discovered that wife had hired a computer expert to delete her computer files. In April 2007, the husband fired his wife as Secretary-Treasurer of the business and began operating Interstate Steel. He has continued to operate the business since that date. The wife has not sought employment since the date of her firing.

The wife would characterize the marriage as one of love. The husband would insist that the relationship was one of convenience and for raising the sons. Each party blames the other for the dissolution of the marriage. Each party is convinced that the other party looted the assets of Interstate Steel during the separation. Each party spent inordinate time

and expense to recreate the QuickBook accounts to justify their positions.

The Court also finds that each party suffers severe credibility lapses. The wife's version of her reasons for wiping her computer clean is certainly indicative of deception. However, the husband's credibility issues are even more egregious. He stated under oath in interrogatories that Goodwin Detailing ceased to exist in 2002. However, he issued invoices from Goodwin Detailing to Interstate Steel in 2008 and as late as 2009 for work he claimed he did as Goodwin Detailing as far back as 2003. . . .

Despite the long hours spent recreating the QuickBook accounts and the various marital history as outlined above, the issue that confronts the Court is the identity and value of the marital estate and its fair and equitable division.

The division of a married couple's estate begins with the classification of the property as either marital property or separate property. . . . There is little dispute over the parties separate property. Prior to the divorce, the parties shared equally in a Primerica Account and each party's distribution has been considered as separate property. Exhibit 1 lists the parties' separate property and the Court hereby awards to each party their separate property as outlined in said Exhibit. In addition, the Court awards to the wife the Cannonball bedroom suite, Rogers flatware, Cape Cod glassware, Mill picture. The Court awards to husband the Husqvarna chainsaw and Dubro Guitar. The parties also own two lots at Bayfront Drive on Douglas Lake with a value of \$337,250. Part of this property was acquired by the husband prior to marriage. However, in an effort to estate plan, the property was deeded to the wife. The Court finds that the property at Bayfront Drive is all marital property. . . .

The value of the majority of the parties' property is not in dispute. Therefore, the Court finds the value of the property as follows:

(A)	Keener Road property	\$ 250,000.00
(B)	Valgro Road property	\$ 128,750.00
(C)	Valgro Road property	\$ 290,000.00
(D)	Springtime Trail property	\$ 243,750.00
(E)	West Ford Valley property	\$ 78,753.00
(F)	Bayfront Drive property	\$ 337,250.00
(G)	Amy Trail property	\$ 46,693.00
(H)	Toyota Van	\$ 15,500.00
(L)	Land Cruiser	\$ 3,000.00
(J)	Pontoon Boat	\$ 750.00
(K)	Pontoon Boat at Amy Trail	\$ 5,000.00
(L)	Lawn mower & golf cart	\$ 4,000.00
(M)	Springtime furniture	\$ 5,000.00
(N)	Amy Trail furniture	\$ 3,000.00
(O)	Amy Trail (miscellaneous)	\$ 1,500.00
(P)	Log splitter	\$ 750.00
(Q)	West Ford furniture	\$ 500.00
(R)	Bay Front furniture	<u>\$ 500.00</u>
	TOTAL	\$1,414,696.00

Additionally, the parties own the following assets:

(A)	Cashier check	\$ 211,052.16
(B)	Certificates of deposit	\$ 296,626.00
(C)	Wife's IRA	\$ 1,638.00
(D)	Husband's IRA	\$ 113,469.00
(E)	Account # 8771	\$ 45,845.00
(F)	TVA Credit Union	\$ 182.40
(G)	First Tennessee - Joint Acct.	\$ 1,331.14
(H)	GDS Account	<u>\$ 6,803.54</u>
	TOTAL	\$ 676,947.24

Finally, the most valuable estate that the parties own is Interstate Steel Corporation. This Corporation has had an erratic earning history during its existence. However, the last several years have been prosperous. Both parties presented expert witness regarding the valuation of the Corporation. Mr. Ray testified on behalf of the husband that as of March 2007, he opined that the value of the Corporation was approximately \$400,000.00. On behalf of the wife, Ms. Smith opined that the

value was \$1,650,000.00. Ms. Smith included in her opinion the performance of the company after March 2007. Since the husband resumed active management of the Corporation in 2007, Interstate Steel has shown increased economic vitality. The husband testified that at the time of the divorce hearing, the Corporation had more than one million dollars in accounts receivable and approximately \$450,000 in bank accounts. The major debts of the corporation were the invoices to Goodwin Detailing that has been previously discussed. The Court finds that the value of Interstate Steel is \$1,650,000.00. The total marital estate is valued at \$3,741,643.24.

After determining the value of the marital estate, the Court must divide this estate in an equitable manner. Dividing marital property is not a mechanical process, but rather is guided by carefully weighing the relevant factors in Tenn. Code Ann. § 36-4-121(c). *Flannary v. Flannary*, 121 S.W.3d 647, 650-51 (Tenn. 2003).

This marriage was of long duration. Although married in 1984, the parties lived together as husband and wife for several years prior to their marriage. The wife is [56] years old and the husband is 71. The wife appears to be in good mental health. The husband seems to have recovered from his bout with depression after his son's death. Both parties suffer several physical ailments. The wife was injured in an automobile accident. Because of her physical limitations, she performed her financial responsibilities with Interstate Steel at her home. The wife has high cholesterol and diabetes. However, her diabetes is under control. Wife has never received a disability rating for her injury as a result of the accident, nor has she sought disability from Social Security. The husband has had a heart attack and suffers from high blood pressure, macular degeneration and hearing loss. He has had a ruptured disc and has problems with his neck. As mentioned before, the wife has an inactive LPN license. She has acquired through her experience with Interstate Steel efficient bookkeeping skills. The husband is a skilled structural steel detailer and has obvious expertise in managing the affairs of Interstate Steel. The wife's age still allows her to be employable either at an at-home

capacity or as an LPN. During the last two years, the husband has displayed that he still has the capacity to energetically and efficiently operate Interstate Steel on an economically promising scale. In summary, the Court finds that both parties still retain skills, and employability and earning capacity, albeit the husband's ability will be limited to a short period of time because of health and age. The major financial liability is the husband's debt on the Rhea County property. Both parties live frugally with the wife needing approximately \$5,000.00 per month for her financial needs and the husband's needs are somewhat smaller. Each party has made a significant contribution to the marital estate. The husband's skills in detailing and in operating a structural steel fabrication facility has provided the most tangible contribution to the financial well being of the parties. The wife has been the financial manager not only for Interstate Steel but for the family as well. She has also served as homemaker for the family while their two sons were in the home. The husband had contributed significantly during the last two years in the economic growth of Interstate Steel to its present worth. The separate property of each party is minimal. Similarly, the estate of each party was not significant at the time of their marriage. The Court finds that the value of the marital estate had been a co-operative effort of both parties. Lastly, the husband is receiving social security. The wife does not.

In considering the above factors, the Court's first decision is to determine the fate of Interstate Steel. While the assets of Interstate Steel are the most valuable of the marital estate, neither party desires its award. The husband views its award to him as the Sword of Damocles over his retirement. The wife desires cash. To be succinct, one party will receive Interstate Steel while the other party, quite necessarily, will receive most of the parties' cash. Therefore, the question before the Court is to determine which party is in the best position to manage and maintain Interstate Steel for a period of time to retain its economic viability before a decision is made to liquidate the business or retire. While the wife took an active role in the affairs of Interstate Steel from its inception and has served as its Chief Financial Officer, she does not possess the

husband's detailing skills. While the wife has made major financial decisions, the husband has been the Chief Manager of the business. The husband has spent his entire employment history in the structural steel business. The husband had developed and maintains the customer list. Finally, over the last two years, the husband has displayed the acuity and ability to enhance the value of Interstate Steel. Therefore, the Court awards the asset to the husband at a total value of \$1,650,000.00.

The wife is hereby awarded the following:

- (A) Keener Road property
- (B) Bayfront Drive property and furniture
- (C) West Ford Valley property, furniture and appliances
- (D) Springtime Trail property
- (E) Certificate of Deposits
- (F) Toyota Van
- (G) Springtime Trail furniture and other items
- (H) Wife's IRA
- (I) Husband's IRA (Sept)
- (J) Account #8771
- (K) TVA Credit Union Assets Accounts
- (L) First Tennessee - Joint Checking
- (M) GDS First Tennessee Checking
- (N) \$105,526.08, representing one-half of the cashier checks deposited in an escrow account.

These awards total \$1,502,674.16. The Court further awards the wife the sum of \$360,500.00 which makes her award total of \$1,868,174.16 or approximately 50% of the marital estate.

The husband is awarded the following property:

- (A) Amy Trail property and furniture and other items
- (B) Valgro Road properties #1 and #2
- (C) Land Cruiser
- (D) Two Pontoon boats
- (E) Golf Cart and lawn mower



In addition, the Court awards to the husband the note payable to husband from Charlene Turner in the amount of approximately \$10,000.00.

The award to the wife of the sum of \$360,500.00 as her equalizing share of the marital estate shall be paid over a period of five years in the amount of \$73,000.00 each year bearing interest at the rate of 6% per annum. These installments shall be due and payable on or before December 31 of each year beginning on December 31, 2009 and each year thereafter until paid. The Court has determined that these sums should be paid in installments rather than a lump sum for the following reasons:

- (A) These installments will provide a yearly income to the wife.
- (B) These installments will alleviate the burden on husband of a substantial outlay of capital at one time.

Because these payments will be made in installments rather than in a lump sum, the wife is hereby awarded a lien on husband's real property to secure the payment of this debt. In the event husband desires to sell any real estate or Interstate Steel before this award is fully discharged, he has the right to discharge this award in a lump sum payment of the amount due and owing. . . .

Husband appeals raising several issues. First, Husband argues that the Trial Court abused its discretion when it adopted the opinion of Wife's expert as to the value of ISC. Next, Husband claims that the Trial Court abused its discretion when it valued ISC as of the date of trial, as opposed to the date Wife's employment with ISC was terminated two years before trial. Husband's third issue is his claim that the Trial Court's overall marital property distribution was inequitable. Finally, Husband claims that the Trial Court erred when it awarded certain bedroom furniture to Wife.

### **Discussion**

In *Neamtu v. Neamtu*, No. M2008-00160-COA-R3-CV, 2009 WL 152540 (Tenn. Ct. App. Jan. 21, 2009), *no appl. perm. appeal filed*, this Court discussed our standard of review with respect to issues surrounding the valuation of marital assets. We stated:

Once property has been classified as marital property, the court should place a reasonable value on property that is subject to division. *Edmisten v. Edmisten*, No. M2001-00081-COA-R3-CV, 2003 WL 21077990, at \* 11 (Tenn. Ct. App. May 13, 2003). The parties have the burden to provide competent valuation evidence. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998). When valuation evidence is conflicting, the court may place a value on the property that is within the range of the values presented. *Watters v. Watters*, 959 S.W.2d 585, 589 (Tenn. Ct. App. 1997). Decisions regarding the value of marital property are questions of fact, *Kinard*, 986 S.W.2d at 231; thus, they are not second-guessed on appeal unless they are not supported by a preponderance of the evidence. *Smith*, 93 S.W.3d at 875.

*Neamtu*, 2009 WL 152540, at \*4.

Janice Smith, CPA/ABV, CFE, CVA (“Smith”) is a certified public accountant in Knoxville. At Wife’s request, Smith prepared a report with the stated purpose of determining the value of ISC. In Smith’s report, ISC was described as follows:

[ISC] operates as an S-Corporation and was formed August 18, 1992 by its current owner, Mr. John Goodwin. Mr. Goodwin owns 100% of the Company’s stock. The Company receives shop drawings and, at times, provides shop drawings or steel drawings for engineering steel fabrication. Materials are ordered and fabrication begins. Completed stairs and handrails as well as skeletal structures are fabricated by the Company and delivered to the job sites. Joists and decking are ordered as flow-through items with profit margins added to the cost. The Company is awarded jobs based on a competitive bidding process.

The Company is owned 100% by John Goodwin. He is the President of the Company and has an extensive background in steel fabrication and structural design. The Company has approximately 25 employees including a sales manager, production manager, engineering manager, purchasing manager and office/accounting manager. The Company has developed a team of personnel that have enhanced the Company’s operations

and does not place reliance on any one person for the day-to-day or continuing operations of the Company. . . .

Smith then discussed the three common but different approaches to valuation, including the income, market, and asset methods. Smith also discussed how she arrived at a discount rate to convert future earnings into a current value, and the capitalization rate, which is a divisor used to convert an expected earnings stream into current value. Smith's report also described the industry research that was relied upon and the various financial exhibits used to arrive at the conclusions set forth in the report. After discussing specifics of how the income method was used to arrive at a conclusion as to ISC's value, Smith concluded that the value of ISC using the income method was \$1,700,000.

Smith also valued ISC using the market and asset methods. Smith again described how she arrived at the values using these particular methods. Smith concluded that using the market method, the value of ISC was \$2,600,000. Using the asset method, Smith valued ISC at \$1,000,000. Smith then reconciled the different values to come up with one value. According to Smith's report:

We have summarized the results of each of the valuation approaches as an attachment to this report. We applied weights to the Income Approach (Capitalization of Weighted Average Cash Flow) and the Asset Approach (Excess Earnings) at 70% and 20% respectively. The remaining 10% was weighted to the Market Approach (Market Value of Invested Capital). . . .

The Market Approach was given less weight due to the lack of identifying truly comparable companies within the transaction databases. However, the transactions do provide a valid indicator of the price in the market place so some weighting would appear to be reasonable.

We weighted the income approach higher than the asset approach since the Company's cash flow would be a better indicator of the Company's value than looking to its net assets which generally provides an indication of the minimum value of a company.

We then performed a reasonableness calculation on the results by looking to the net asset value and the average cash flow for 2006 through 2008. The value approximates the net

assets (before excess earnings calculations) plus approximately 2.5 years of cash flow. This is not an unreasonable period of time. . . .

Based on our calculations attached and as described in this report, the calculated value of 100% of the company, *Interstate Steel Corporation* as of December 31, 2008 is \$1,650,000. . . .

In summary, Smith concluded that as of December 31, 2008, the value of ISC ranged from \$1,000,000 to \$2,600,000, depending on the method used. Then by applying a weighted approach, Smith determined ISC's overall value to be \$1,650,000.

Husband's expert witness at trial was Richard Ray ("Ray"), CPA/ABV, a certified public accountant from Jonesborough, Tennessee. Ray also valued ISC using the income, market, and asset methods. Ray's values, however, were calculated as of the date Husband terminated Wife's employment with ISC, March 31, 2007, which was almost two years before the trial began. As with Wife's expert, Ray likewise discussed how he arrived at the respective values he placed on ISC depending on the particular method used.

In a summary provided by Ray, he concluded that using the income method, ISC was worth \$600,000. Using the market method, Ray determined that ISC was worth \$665,000. Finally, using the asset method, Ray valued ISC at \$400,000. Ray then reconciled the different values and concluded that it would be accurate to give 50% weight to the income method, and 50% to the market method, which would result in an overall value of \$632,500 before deducting certain discounts for goodwill and "liquidity and tax discounts." After deducting the discounts, Ray's overall value of ISC plummeted to \$385,000. Including goodwill, Ray concluded that the overall marketable value of ISC was \$450,000.

In *Inzer v. Inzer*, No. M2008-00222-COA-R3-CV, 2009 WL 2263818 (Tenn. Ct. App. July 28, 2009), *no appl. perm. appeal filed*, this Court acknowledged three types of valuation methods that can be relied upon when valuing a corporation such as ISC. We stated:

The subject business is a limited liability corporation, a type of entity that is akin to a closely held corporation for purposes of valuing it as a marital asset. *Powell v. Powell*, 124 S.W.3d 100, 104 (Tenn. Ct. App. 2003). While there are several acceptable methods used to calculate the value of a corporation, it is particularly important in this case to note that "determining

the value of a closely held corporation is not an exact science. . . .” *Wright v. Quillen*, 909 S.W.2d 804, 809 (Tenn. Ct. App. 1995) (citing *Wallace*, 733 S.W.2d at 107). Our Supreme Court recognized three of these methodologies: (1) the market value method, (2) the asset value method, and (3) the earnings value or capitalization of earnings method. *Blasingame v. Am. Materials, Inc.*, 654 S.W.2d 659, 666 (Tenn. 1983), *superceded on other grounds by* Tenn. Code Ann. § 47-8-102 (1992 Repl. & Supp. 1998). The *Blasingame* court explained the methods as follows:

The market value method establishes the value of the share on the basis of the price for which a share is selling or could be sold to a willing buyer. This method is most reliable where there is an established market for the stock. The asset value method looks to the net assets of the corporation valued as a ‘going concern,’ each share having a pro rata value of the net assets. The net assets value depends on the real worth of the assets as determined by physical appraisals, accurate inventories, and realistic allowances for depreciation and obsolescence. The investment value method relates to the earning capacity of the corporation and involves an attempt to predict its future income based primarily on its previous earnings record. Dividends paid by the corporation are considered in its investment value. Generally, all the elements involved in these methods are considered in determining the value of the dissenter’s stock.

*Id.* (quoting *Brown v. Hedahl's-Q B & R, Inc.*, 185 N.W.2d 249, 254 (N.D. 1971)).

The method or combination of methods used depends upon the unique circumstances of each corporation. . . .

*Inzer*, 2009 WL 2263818, at \*4.<sup>2</sup>

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<sup>2</sup> The *Inzer* Court also pointed out that the market value method was best used when valuing a public  
(continued...)

There is no doubt that the Trial Court was confronted with different opinions as to the value of ISC, although both experts would agree that ISC was a valuable marital asset. Finding a resolution as to this type of factual discrepancy is one of the main roles of a trial court. The value placed on ISC by the Trial Court was a question of fact. The Trial Court was free to place a value on ISC that was “within the range of the evidence presented.” *Inzer*, 2009 WL 2263818, at \*4. That is exactly what the Trial Court did. The value placed on ISC by the Trial Court was within the range of reasonableness and within the range of the evidence presented. We cannot conclude that the evidence in any way preponderates against the Trial Court’s finding that ISC had a value of \$1,650,000.

Husband’s second issue is his claim that the Trial Court should have relied on the values provided by his expert because his expert valued ISC as of the date Husband terminated Wife’s employment with ISC. As set forth previously, the Trial Court found that since Husband “resumed active management of [ISC, it] has shown increased economic vitality. [Husband] testified that at the time of the divorce hearing, the Corporation had more than one million dollars in accounts receivable and approximately \$450,000 in bank accounts.” Husband argues that it is purely a matter of equity to award him alone any increase in value that occurred after he fired Wife because she did not contribute to any such increase. We disagree. As discussed by the Trial Court, there was a period of time encompassing several years following the death of Husband’s son Brad where Wife and the parties’ son Jeremy essentially ran the business. Thus, Husband is getting the benefit of a period of time where he did little to assist in the operation of ISC. The period of time where Wife did not assist should be treated no differently under the facts of this case, especially given that it was Husband who terminated Wife’s employment at ISC.

We rejected a similar argument in *Bunch v. Bunch*, 281 S.W.3d 406 (Tenn. Ct. App. 2008). In *Bunch*, the husband argued that the trial court erred when it valued his 401K as of the date of trial, as opposed to when the parties quit living together. In rejecting the husband’s argument, we noted that the relevant statute specifically provided that marital property was to be valued as near as possible to the date the order dividing the marital property was entered. We stated:

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<sup>2</sup>(...continued)  
corporation, and it was “improper” to use that method when valuing a closely held corporation. *Inzer*, 2009 WL 2263818, at \*4, 5 (quoting *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987)). In the present case, ISC is a closely held corporation. When Smith weighed the three approaches to arrive at an overall weighted value, the market method was given only 10% of the overall weight. Ray, however, weighted the market approach at 50%.

Courts must look to Tenn. Code Ann. § 36-4-121 when determining how to distribute property in a divorce. In pertinent part, Tenn. Code Ann. § 36-4-121 provides:

(b) For purposes of this chapter:

(1)(A) “Marital property” means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of the filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and *valued as of a date as near as reasonably possible to the final divorce hearing date. . . . All marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property.*

\* \* \*

Husband contends that the Trial Court committed errors with regard to the distribution of the marital property specifically as to the valuation of Husband’s 401k and as to issues regarding the House. First, Husband claims that the Trial Court erred in valuing Husband’s 401k as of the date of the trial rather than the date that the parties separated.

As this Court explained in *Dunlap v. Dunlap*:

The statute governing the distribution of marital property requires that property be valued “as of a date as near as reasonably possible to the final divorce hearing date.” *Wright v. Quillen*, 909 S.W.2d 804, 809 (Tenn. App. 1995) (quoting T.C.A. § 36-4-121(b)(1)(A) (1991)). In construing the meaning of the term “final divorce hearing date,” this court has held that the appropriate date for valuing the parties’ property is the date a decree is entered declaring the parties divorced.

*Dunlap v. Dunlap*, 996 S.W.2d 803, 817 (Tenn. Ct. App. 1998). Spouses may legally separate and have marital property distributed prior to a final divorce hearing date pursuant to Tenn. Code Ann. § 36-4-121(a)(2) (2005). However, spouses who are not legally separated are still married.

In the case now before us, Wife and Husband were not legally separated prior to trial. Therefore, the Trial Court correctly valued Husband's 401k as of a date as near as reasonably possible to the final divorce hearing.

*Bunch*, 281 S.W.3d at 410-12 (emphasis added).

Husband's expert valued ISC as of March 31, 2007, and Wife's expert valued ISC as of December 31, 2008. The trial took place on various days beginning in March of 2009. In short, the value placed on ISC by Wife's expert was much closer in time to the date of trial, by roughly nineteen months, as compared to the value found by Husband's expert. ISC is not Husband's separate property that increased in value without any contribution from Wife. Rather, ISC is marital property that, according to Husband, increased in value without Wife's contribution after Husband chose to fire Wife. Accordingly, we conclude that the testimony of Wife's expert was more in line with the statutory requirements, i.e., that ISC be "valued as of a date as near as reasonably possible to the final divorce hearing date." Tenn. Code Ann. § 36-4-121(b)(1)(A).

As mentioned previously, Husband argues on appeal that, as part of the equitable division of marital property, he should receive the increase in value of ISC that took place after he fired Wife. Husband states:

The husband does not contend that the total value of Interstate Steel Corporation is not marital property, as defined in [Tenn. Code Ann. § 36-4-121(b)(1)(A)(2005)]. Rather, equity mandates that he be allowed to retain the increase in value of the company after the wife was fired . . . on or about March 30, 2007.

This argument by Husband seems to suggest that there was some change in value between the date ISC was valued by Husband's expert and the date it was valued by



Wife's expert, although no exact value in increase is mentioned in Husband's brief.<sup>3</sup> Assuming there was an increase in value, this would make the valuation opinion by Husband's expert less reliable, and the opinion of Mother's expert more reliable as to the value of ISC as of the date of the divorce hearing. We conclude that Husband's second issue is without merit.

Husband's next issue is his claim that the Trial Court's marital property distribution was inequitable. Husband also claims that he was not awarded sufficient liquid assets. Husband acknowledges that the success of this issue is tied, at least in part, to the success of his first issue. We already have affirmed the value placed by the Trial Court on ISC. Since the value of ISC remains unchanged, when looking at the overall distribution of marital property, Husband received assets valued by the Trial Court at \$ 1,888,469.08. Wife was awarded marital property valued at \$1,863,174.00.

When making an equitable division of marital property, a trial court shall consider all relevant factors including:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

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<sup>3</sup> In all fairness to Husband, we note that later in his brief he states that equitably he should be awarded "the growth in the value of the company, if any . . . ."

- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse; and
- (11) Such other factors as are necessary to consider the equities between the parties. . . .

Tenn. Code Ann. § 36-4-121(c) (2005).

A trial court has wide discretion in dividing the interest of the parties in marital property. *Barnhill v. Barnhill*, 826 S.W.2d 443, 449 (Tenn. Ct. App. 1991). As noted by this Court in *King v. King*, when dividing marital property:

The trial court's goal in every divorce case is to divide the parties' marital estate in a just and equitable manner. The division of the estate is not rendered inequitable simply because it is not mathematically equal, *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988), or because each party did not receive a share of every item of marital property. *Brown v. Brown*, 913 S.W.2d [163] at 168. . . . In the final analysis, the justness of a particular division of the marital property and allocation of marital debt depends on its final results. *See Thompson v. Thompson*, 797 S.W.2d 599, 604 (Tenn. App. 1990).

*King v. King*, 986 S.W.2d 216, 219 (Tenn. Ct. App. 1998) (quoting *Roseberry v. Roseberry*, No. 03A01-9706-CH-00237, 1998 WL 47944, at \*4 (Tenn. Ct. App. Feb. 9, 1998), *no appl. perm. appeal filed*).

In this case, given, among other things, the amount of property awarded to each party, we cannot conclude that the marital property distribution was inequitable either in the total value of property that each party was awarded or the type of assets each party was awarded. In reaching this conclusion, we note that based on Husband's proof, he certainly believed and argued that he was the proper person to run ISC, as evidenced by his claim that the increase in the value of ISC after he fired Wife should be his alone. On appeal, Husband does not claim that he should not have been awarded ISC. Rather, he challenges the value assigned to that company. When Husband was awarded ISC and it was valued at \$1,650,000, a decision we have affirmed, with that one asset Husband was awarded 44% of the entire marital estate. As such, the Trial Court was left with few options regarding how to equitably distribute the remaining property. We further note that the parties were ordered to split a cashier's check valued at over \$210,000.

The final issue is Husband's claim that he should have been awarded a cannonball bedroom suite. Husband claims this was his separate property, although it currently is being used by Wife's invalid mother. Husband testified that he had no problem with Wife's mother continuing to use the furniture as long as she so desires, but thereafter it should then be returned to him. At oral argument, Wife's counsel admitted that this furniture was Husband's separate property and that this furniture should be returned to Husband once it was no longer being used by Wife's mother. Accordingly, we modify the Trial Court's final judgment to reflect that Husband is awarded as his separate property the cannonball bedroom suite currently being used by Wife's mother, with the furniture to be returned to Husband by Wife once Wife's mother is finished using the furniture.

### **Conclusion**

The judgment of the Trial Court is modified to reflect that Husband is awarded as his separate property the cannonball bedroom furniture, to be returned to Husband by Wife once the furniture is no longer being used by Wife's mother. In all other respects, the judgment of the Trial Court is affirmed. This case is remanded to the Trial Court solely for collection of the costs below. Costs on appeal are taxed to the Appellant, John A. Goodwin, and his surety, for which execution may issue, if necessary.

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D. MICHAEL SWINEY, JUDGE